

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6183 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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IPCA HEALTH PRODUCTS PVT LTD

Versus

REGIONAL PROVIDENT FUND                      COMMISSIONER

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Appearance:

M/S TRIVEDI & GUPTA for Petitioner

MR BHARAT T RAO for Respondent No. 1, 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/08/1999

ORAL JUDGEMENT

Notice of this writ petition having been issued on 11.11.1998 and affidavits having been exchanged, this petition is proposed to be finally disposed of at the admission stage keeping in view of the order dated 11.11.1998 passed by this court.

Learned counsel for the parties have been heard.

The challenge in this petition is the order dated 29.5.1998 of the Presiding Officer of the Appellate Tribunal constituted under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. It has been argued by the learned counsel for the petitioner that the appeal was dismissed on technical ground that it was barred by limitation and the appeal was not considered on merits, hence it is a fit case for quashing the order of the Appellate Tribunal and directing the Tribunal to decide the appeal on merits. In order to appreciate this contention certain facts have to be kept in mind.

The order of the authority under Section 7A of the Act was passed on 21.10.1993. Feeling aggrieved against this order, the petitioner preferred Special Civil Application in this court vide Special Civil Application No. 4859 of 1994. The said Special Civil Application was decided on 8.10.1997. It was noticed in the said order by this court that subsequent to the institution of the writ petition, new provision was introduced in the Act by incorporating Section 7-I constituting Appellate Tribunal and since there was alternative statutory remedy of appeal against the impugned order available to the petitioner, the writ petition was dismissed. However, direction was given that in case the appeal is filed within a period of one month from today (which means from the date of order namely order dated 8.10.1997), the same may not be dismissed only on the ground of limitation and shall be decided on merits by the Appellate Tribunal. Certain directions were also issued regarding interim relief to be considered by the Appellate Tribunal. The appeal was however filed before the Appellate Tribunal on 28.5.1998. It was obviously much beyond the period of one month allowed by this court in order dated 8.10.1997 for preferring appeal. Delay in filing the appeal was sought to be explained which has been considered by the Appellate Tribunal in the impugned order. The Appellate Tribunal found that there was no sufficient explanation for delay in filing the appeal and that under Rule the Tribunal had no power to condone the delay after sixty days, even if it found that the grounds for condonation of delay were sufficient. Rule 7 framed under the Employees Provident Fund Appellate Tribunal Rules, 1957, prescribes that appeal against the order passed inter alia under Section 7A can be preferred within sixty days from the date of the order. It is further provided in the proviso to Rule 7(2) of the said Rule that if the Tribunal is satisfied that the appellant was prevented by

sufficient cause from preferring the appeal within the prescribed period then it can extend the said period by a further period of sixty days. In this case the appeal should have been filed within a period of 120 days from the date of order. Obviously beyond 120 days the Appellate Tribunal had no authority and jurisdiction to condone the delay. The appeal was filed on 28.5.1998. The order under appeal was passed on 21.10.1993. An attempt was made to show the Appellate Tribunal that because there was delay in preparation of copy of order of this court passed in the above Special Civil Application, the appeal could not be filed in time. That explanation also does not appear to be convincing. In the first place the Rule quoted above does not apply because this Rule was not in existence when the writ petition was filed. If this court granted one month's time for filing appeal it will be deemed that thirty days time computed from 8.10.1997 was granted to the petitioner to file the appeal. The order in Special Civil Application was passed in presence of the learned counsel for the petitioner Shri Y.S. Vyas. There is no requirement either under the law or under the Rules that the certified copy of this court's order should have been annexed with the memo of appeal which was to be filed before the Appellate Tribunal. If this is so then the explanation of delay in obtaining the certified copy of order of this court cannot be taken into consideration for extending the period of limitation or for condoning the delay in filing the appeal.

Whatever explanation was offered on this score was also not satisfactory. The application for copy was given on 9.10.1997. At one place it is mentioned in the order that copy was delivered and received on 24.11.1997 and at another place in the order it was mentioned that it was received on 25.11.1997. Taking it to be 25.11.1997 as the date of receipt of copy of the order of this court, there is again no explanation why the appeal could not be filed on or before 24.12.1997. The explanation that copy was received from the advocate of the petitioner on 19.2.1998 is nothing but an after thought and it cannot be considered to be any explanation, what to say of sufficient explanation for getting the delay in filing the appeal condoned.

For the reasons aforesaid there was no satisfactory explanation for delay in filing the appeal despite clear order passed by this court that the appeal be filed within a month from 8.10.1997. There is, thus, no error in the impugned order. There is, thus, no

ground for quashing the impugned order. The writ  
petition therefore fails and is hereby dismissed. No  
order as to costs.

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